

141032

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)	
)	
Safety-Kleen Corporation)	Resource Conservation
New Castle Recycle Center)	and Recovery Act
3700 LaGrange Road)	§ 3008(a)(1)
Smithfield, Kentucky 40068)	42 U.S.C. § 6928(a)(1)
)	
EPA ID No.: KYD 053 348 108)	Docket Number: 96-14-R
)	
Respondent.)	
)	

CONSENT AGREEMENT AND CONSENT ORDER

I. Nature of the Action

1. The United States Environmental Protection Agency (EPA) issued a Complaint and Compliance Order (Complaint) to Safety-Kleen Corp. on September 30, 1996, pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a)(1), as amended, and pursuant to the Consolidated Rules of Practice Governing the Administrative Permits, found at 40 C.F.R. Part 22, as amended. Complainant is the RCRA Enforcement and Compliance Branch Chief, Region 4, United States Environmental Protection Agency. Respondent is Safety-Kleen Corp., New Castle Recycle Center, a facility operating in Smithfield, Kentucky.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, Complainant and Respondent have agreed to the execution of this Consent Agreement and Consent Order (CACO) and Respondent hereby agrees to comply with the terms of this CACO.

II. Preliminary Statements

1. Respondent has been served with a copy of the Complaint, including a Notice of Opportunity for Hearing in this matter.

2. For the purpose of the entry and enforcement of the terms and conditions of this CACO only, Respondent admits the jurisdictional allegations of the Complaint in this matter pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

III. Findings of Fact and Conclusions of Law

1. Respondent is Safety-Kleen Corp., New Castle Recycle Center, a facility operating in Smithfield, Kentucky. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
2. Respondent is the "owner" and "operator" of a "facility" located in Smithfield, Kentucky, as those terms are defined in 40 C.F.R. § 260.10.
3. Respondent is a multi-national corporation engaged in providing parts cleaning services and solvent recycling to a wide range of customers.
4. Respondent's facility engages in container and bulk storage of hazardous waste, debris recycling, hazardous waste fuel marketing and other associated activities.
5. Section 3005(a) of RCRA, 42 U.S.C. § 6928(a), prohibits the treatment, storage, or disposal of hazardous waste without a permit issued pursuant to RCRA. The implementing regulations for this requirement are found in 40 C.F.R. Parts 264, 265, 270, and 124. The regulations governing the issuance of such permits became effective on November 19, 1980.
6. Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), requires persons managing hazardous waste to submit a notification stating the location and general description of such hazardous waste.
7. 40 C.F.R. § 270.10(a) provides that persons required to have a permit under Subtitle C of RCRA must submit a permit application as required under 40 C.F.R. §§ 270.70 - 270.73.
8. Pursuant to 40 C.F.R. § 270.30(a), failure to comply with all conditions of a permit issued pursuant to RCRA constitutes a violation of RCRA and is grounds for an enforcement action.
9. Respondent was issued an initial hazardous waste storage permit by the Kentucky Department for Environmental Protection (KYDEP) on March 31, 1986.
10. The hazardous waste storage permit includes specific guidelines for the handling of hazardous waste.
11. On June 27, 1995, and January 24, 1996, EPA and KYDEP performed Compliance Evaluation Inspections (CEIs) at Respondent's facility.
12. As a result of the inspections, EPA and KYDEP determined that Respondent was in violation of RCRA.

13. On August 22, 1996, EPA notified Respondent of the alleged violations which were detailed in a RCRA Inspection Report.

14. On August 26, 1996, EPA issued Respondent a Notice of Violation letter alleging that Respondent was in violation of RCRA.

15. On September 23, 1996, EPA and Respondent met to discuss the violations alleged in the Notice of Violation.

16. On September 30, 1996, EPA issued Respondent a RCRA Section 3008(a), 42 U.S.C. § 6928(a) Complaint and Compliance Order for the alleged violations discovered during the June 27, 1995, and January 24, 1996, inspections.

17. On October 29, 1996, EPA and Respondent met again to discuss the alleged violations.

18. On December 16-17, 1996, EPA conducted a routine unannounced CEI at Respondent's facility. Additional alleged violations were discovered during this inspection.

19. Respondent was notified of these alleged violations in the March 24, 1997, inspection report.

20. Respondent waives its right to a hearing on the allegations in the Complaint.

21. Respondent waives its right to challenge the validity of this CACO and the settlement of the matters addressed in the Complaint and in the March 24, 1997, RCRA inspection report, on the basis of any issue related to the Paperwork Reduction Act.

22. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into the terms and conditions of this CACO and to execute and legally bind Respondent to this CACO.

23. Respondent agrees to pay the civil penalty as set forth in this CACO.

24. The parties agree that the settlement of this matter is in the public interest and that this CACO is consistent with the applicable requirements of RCRA.

25. The parties agree that compliance with the terms of this CACO shall resolve any and all violations of RCRA arising from the above-referenced inspections, including those alleged in the Complaint and in the March 24, 1997, RCRA inspection report.

26. This CACO is entered solely for the purpose of resolving the disputed claims between the Complainant and Respondent. In Consent to entry of this CACO, neither party admits the factual or legal allegations made by either party. Complainant and Respondent agree that this CACO shall not be construed as evidence of any of the violations alleged herein, either directly or indirectly; nor shall this CACO be used in any way, either directly or indirectly, for any purpose, however and wherever arising, in any judicial or administrative proceedings except for a proceeding brought by either party to this CACO to enforce the terms and conditions specified herein. Further, Respondent does not waive any defense which it may have raised in any other proceeding brought by Complainant or any other person or entity.

27. It is the intent of the parties that the provisions of this CACO are severable and that, should any provision be declared by a court of law to be invalid or unenforceable, the other provisions shall remain in effect to the maximum extent reasonable.

28. Nothing in this CACO shall create or vest in any persons or entities not a party to this CACO any right to use this CACO or any statement contained herein for any purpose, and shall not constitute evidence of any admission of liability, law, or fact, a waiver of any right or defense, or estoppel against the parties to this CACO or by any other person not a party hereto.

IV. Consent Order

A. Terms of Compliance

The parties agree to the entry of the following Consent Order:

1. Respondent shall submit to EPA and KYDEP, within sixty (60) calendar days of the effective date of this CACO a revised RCRA Part A application which shall include the Drum Shredder, Automatic Drum Decanting System (ADDS) and Squeezer Unit as waste handling units under Subpart X of 40 C.F.R. Part 264 and 401 KAR 34:250.

2. Respondent shall submit to EPA, within sixty (60) calendar days of the effective date of this CACO, a schedule for the engineering design and installation of equipment required pursuant to 40 C.F.R. Part 264, Subpart CC (Subpart CC Equipment), for the Drum Shredder, ADDS and Squeezer Unit

3. Respondent shall include, as milestones in the schedule submitted to EPA, timeframes for submission of the engineering design plan and commencement of construction and operation so as

to ensure the successful and timely installation of the Subpart CC Equipment in accordance with this CACO.

4. By December 31, 1998, the Subpart CC Equipment shall be installed and operational.

5. Respondent shall pay a civil penalty in the amount of \$62,650 within thirty (30) calendar days of the effective date of this CACO. If payment is not received within this timeframe, interest, handling charges and late-payment penalties will begin to accrue in the manner set forth at 31 U.S.C. § 3717.

6. Payment shall be made by cashier's or certified check payable to: Treasurer, United States of America. The facility name and Docket Number for this matter shall be referenced on the face of the check. Payment shall be tendered to:

United States Environmental Protection Agency
P.O. Box 100142
Atlanta, Georgia 30384

7. Respondent shall submit a copy of the payment, and any accompanying transmittal letter, to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303

and

Jeaneanne M. Gettle, Chief
North Section
Enforcement and Compliance Branch
Waste Management Division
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303

8. Complainant reserves the right to take enforcement action against Respondent for any violations of RCRA and the implementing regulations, except for the violations addressed herein, or arising from the above-referenced inspections, and to enforce the terms and conditions of this CACO.

9. Compliance with this CACO shall resolve any and all violations of RCRA arising from the above-referenced inspections, including those alleged in the Complaint and in the March 24, 1997, RCRA inspection report. This CACO shall not otherwise

effect any liability of Respondent to the United States or to any other person, firm, partnership, entity or corporation. Notwithstanding any other provision of this CACO, Complainant expressly reserves the right to: 1) pursue criminal enforcement; 2) initiate an enforcement action pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, for imminent and substantial endangerment; or 3) bring any other enforcement action against Respondent for violation of any federal or state statute, regulation or permit, other than those violations arising from the above-referenced inspections, including those alleged in the Complaint and in the March 24, 1997, RCRA inspection report.

10. Respondent agrees that it shall maintain compliance with all applicable provisions of RCRA and the implementing regulations.

11. This CACO may be amended or modified only by written agreement executed by both EPA and Respondent.

12. The provisions of this CACO shall be deemed satisfied upon Respondent's full payment of the civil penalty required by this CACO and installation and achievement of operational status of the equipment required by 40 C.F.R. Part 264 Subpart CC within the time frame permitted herein.

13. Complainant does not waive and expressly reserves its right to enforce the terms and conditions of this CACO.

14. KYDEP has been made aware of the agreements contained herein and has expressed no objections to said agreements.

15. Each party shall bear its own costs and attorney's fees.

B. Stipulated Penalties

16. In the event Respondent fails to comply with or fulfill any of the requirements or obligations established in Part IV, Paragraphs 1 through 4, above, including schedules and milestones established pursuant thereto, Respondent shall pay to Complainant stipulated penalties in the amount set forth below for each day of non-compliance. The stipulated penalties set forth herein shall begin to accrue on the day after the complete performance is due and shall continue to accrue through the final day of completion of the obligation. Issuance and receipt of a notice of noncompliance is not a condition precedent to the accrual of stipulated penalties. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate instances of noncompliance with this CACO.

The following stipulated penalties shall be payable for each day of non-compliance:

<u>Penalty Per Day Per Violation</u>	<u>Period of Noncompliance</u>
\$750.00	1-15 days
\$1250.00	More than 15 days

17. All penalties owed the United States pursuant hereto shall be due and payable within thirty (30) days of Respondent's receipt from Complainant of a written demand for payment of penalties. Complainant may, upon review of the facts and circumstances, elect not to demand stipulated penalties for a given instance of noncompliance. All payments pursuant hereto shall be made in accordance with the terms of Part IV, Paragraphs 6 and 7, above.

V. Effective Date

The effective date of this CACO shall be the date on which it is signed by the Regional Administrator, U.S. EPA, Region 4.

(Signatures contained on next page)

Agreed to this 28th day of May, 1997
Safety-Kleen Corporation

By: Scott Z. Foll
Title: SR. VICE PRESIDENT.

Agreed to this 3 day of June, 1997

Jewell Grubbs
Jewell Grubbs
Chief, Enforcement Compliance Branch
Waste Management Division

It being agreed, it is so Order this 9th day of June,
1996.

John H. Hankinson, Jr.
John H. Hankinson, Jr.
Regional Administrator
EPA, Region 4

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Consent Order, Docket No. 96-14-R, has been sent, this ____ day of May, 1997, to:

Original by Hand-deliver:

Ms. Julia P. Mooney
Regional Hearing Clerk
U.S. E.P.A., Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30341

By Pouch Mail:

The Honorable Spencer T. Nissen
Acting Chief Administrative Law
Judge
U.S. E.P.A.
Mail Code 1900
401 M Street, S.W.
Washington, D.C. 20460

By First Class Mail:

Mr. David Hanson
Plant Manager
Safety-Kleen Corporation
3700 La Grange Road
Smithfield, Kentucky 40068

and

Mr. Tom Giller, Esq.
Associate Counsel
Safety-Kleen Corporation
1000 North Randall Road
Elgin, Illinois 60123

and

Ms. Barbara H. Gallo, Esq.
Long, Aldridge & Norman
One Peachtree Center, Suite 5300
303 Peachtree Street
Atlanta, Georgia 30308

Dated this _____ day of _____, 1996.

LaShandra Gully
Law Clerk